D.B. CIVIL SPECIAL APPEAL(W)NO.9/2006

Bhanwar Lal
Vs.
The Manager, Financial Corporation, Churu & Anr.

Date of Order :: 11-10-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri R.S. Saluja, for the appellant.
Shri Rakesh Sinha, for
Smt. Pratishtha Dave, for the respondent (R.F.C.).

This appeal is directed against the order of learned Single Judge dated 19.11.2005 in SBCWP no.105/1996 allowing the writ petition of the respondent Rajasthan Financial Corporation (for short 'Corporation').

The Corporation had filed writ petition challenging the award of the Labour Court directing reinstatement of the appellant. It is not in dispute that the appellant was employed by the Corporation to keep watch over the assets of the industrial unit which had been taken over by the Corporation in terms of Section 29 of the Financial Corporation Act. It is also not in dispute that during his employment, the appellant was paid from the funds of the concerned industrial unit. After his services were terminated, he raised industrial dispute. The labour Court by the impugned award held that the termination of service was illegal and directed his

reinstatement with full back wages and continuity of service. The learned Single Judge relying on the case of Branch Manager, State Bank of Hyderabad Vs. Abdul Raheem and another, (2001)10 SCC 615 held that there was no relationship of master/employer and servant/employee between the Corporation and the appellant and accordingly set aside the award.

Counsel Shri R.S. Saluja did not challenge the finding of the learned Single Judge on the point of employer/employee relationship. He submitted that during pendency of the proceedings in this Court before the Single Bench, on application of the appellant under Section 17-B of the Industrial Disputes Act, order was passed for payment of wages in terms of that Section; whereas two instalments of deposits made pursuant to the said orders were released in favour of the appellant, the third instalment to the tune of about Rs.40,000/- could not be paid before the writ petition came to be allowed with a finding that the appellant cannot be treated as employee of the Corporation. Meanwhile, it is said, the appellant has taken recourse to Section 15 of the Payment of Wages Act, 1936 in respect of the aforesaid amount. Counsel submitted that his claim of payment of wages in the aforesaid proceeding under the Payment of Wages Act may be considered notwithstanding the finding of the learned Single Judge in the connected writ petition.

We do not wish to express our opinion on the applicability of Section 15 of the Payment of Wages Act in the facts of the case and/or entitlement of the appellant in the proceeding thereunder. We leave the matter open to be decided by the concerned authority. It goes without saying that if an adverse decision is passed, it will be open to the appellant to challenge the same in accordance with law.

With these observations, the petition is dismissed.

[MOHAMMAD RAFIQ],J. [S.N.JHA],CJ.

Praveen